

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**TRANSPORTATION**  
**Senator Latvala, Chair**  
**Senator Evers, Vice Chair**

**MEETING DATE:** Tuesday, April 5, 2011  
**TIME:** 10:15 a.m.—12:15 p.m.  
**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

**MEMBERS:** Senator Latvala, Chair; Senator Evers, Vice Chair; Senators Benacquisto, Bullard, Garcia, Joyner, and Storms

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 1912</b> Evers (Similar H 1263)	Trucking; Cites this act as the "Small Trucker Relief Act." Provides for the county tax collector to act as an agent of the Department of Highway Safety and Motor Vehicles for the issuance of certain commercial driver's licenses and registration tags. Exempts trucks owned by small trucking firms from laws that prohibit idling. Provides for a waiver from the Department of Environmental Protection exempting such firms from rules and regulations restricting truck washing. Provides such firms with a tax credit for the costs of idling, etc.	TR 03/29/2011 Not Considered TR 04/05/2011 EP BC
2	<b>SB 1190</b> Detert (Identical H 1165)	Driver's Licenses and Identification Cards; Provides for a person's status as a veteran to be indicated on his or her driver's license or identification card upon payment of an additional fee and presentation of the person's Form DD 214.	MS 03/30/2011 Favorable TR 04/05/2011 BC
3	<b>SB 1530</b> Altman (Identical H 515)	Driver's Licenses; Creates the "Mature Drivers Act." Revises age requirements for issuance of driver's licenses. Amends provisions relating to reporting of licensed driver's or applicant's mental or physical disability to drive or need to obtain or wear a medical identification bracelet and restriction of the driving privilege of a person who has accumulated six or more points within a 12-month period. Revises age requirements for issuance of learner's driver's licenses, etc.	TR 04/05/2011 BC

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 2012</b> Braynon (Identical H 1455)	Specialty License Plates; Creates the Go Green license plate. Establishes an annual use fee for the plate and provides for the distribution of use fees received from the sale of the plate.	TR 04/05/2011 EP BC
5	<b>SB 2036</b> Braynon (Similar H 1377, H 1461)	Uniform Traffic Control; Authorizes school districts to deploy school bus traffic infraction detectors under certain circumstances. Provides for use of school bus traffic infraction detectors to enforce specified provisions requiring a person driving a vehicle to stop when approaching a school bus displaying a stop signal. Authorizes the Department of Highway Safety and Motor Vehicles, a county, or a municipality to authorize a traffic infraction enforcement officer to issue and enforce a citation for a violation of such provisions, etc.	TR 04/05/2011 ED BC
6	<b>CS/SB 1124</b> Education Pre-K - 12 / Montford (Similar H 109)	Public School Buses; Provides for district school board policies that authorize commercial advertisements on school buses. Provides policy requirements relating to reimbursement to the school district, prohibited advertisements, and signage and equipment standards. Requires a school bus to be withdrawn from use under certain circumstances. Provides for the remittance and allocation of revenue.	ED 03/23/2011 Fav/CS TR 04/05/2011 BC
7	<b>SB 904</b> Dean (Identical H 431)	Driver's Licenses and Identification Cards; Requires that the application form for an original, renewal, or replacement driver's license or identification card include an option to make a voluntary contribution to Disabled American Veterans, Department of Florida. Provides that such contributions are not income of a revenue nature.	MS 03/23/2011 Favorable TR 04/05/2011 BC

**COMMITTEE MEETING EXPANDED AGENDA**

Transportation

Tuesday, April 5, 2011, 10:15 a.m.—12:15 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>CS/SB 1824</b> Regulated Industries / Hays (Compare CS/H 63, CS/CS/H 883, CS/H 5007, CS/S 366, CS/S 476)	Regulated Professions and Occupations; Authorizes the Department of Highway Safety and Motor Vehicles to release certain digital images to the Department of Business and Professional Regulation to identify certain persons. Authorizes the Department of Business and Professional Regulation to grant waivers of renewal fees under certain circumstances. Revises continuing education requirements for certain license reactivations. Repeals provisions relating to Uniform Standards of Professional Appraisal Practice, etc	RI 03/29/2011 Fav/CS TR 04/05/2011 BC

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Transportation (Evers) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Small Trucker Relief Act."

Section 2. As used in this act, the term "small trucking firm" means a trucking enterprise that has fewer than 30 employees or has fewer than 50 trucks in operation.

Section 3. Trucking regulation workgroup.-

(1) There is created the Trucking Regulation Workgroup.

(2) The workgroup shall consist of the following members,



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13 whose appointments to the workgroup must be made within 30 days  
14 after the effective date of this act:

15 (a) The Secretary of Transportation, or the secretary's  
16 designee.

17 (b) The Executive Director of the Department of Revenue, or  
18 the executive director's designee.

19 (c) The Secretary of Environmental Protection, or the  
20 secretary's designee.

21 (d) The Commissioner of the Department of Law Enforcement,  
22 or the commissioner's designee.

23 (e) The Executive Director of the Department of Highway  
24 Safety and Motor Vehicles, or the executive director's designee.

25 (f) Three members, appointed by the Governor, who shall be  
26 owners or employees of a small trucking firm as defined in  
27 section 2.

28 (g) One member, appointed by the Governor, who is a member  
29 of the Florida Trucking Association.

30 (3) On or before October 1, 2011, the workgroup shall  
31 deliver to the Governor, the Speaker of the House of  
32 Representatives, and the President of the Senate, a report  
33 concerning rules and regulations affecting small trucking firms.  
34 The report shall provide legislative recommendations related to:

35 (a) Penalties assessed for idling by trucks owned by small  
36 trucking firms;

37 (b) Development of a corporate tax credit related to the  
38 costs of idling by trucks owned by small trucking firms;

39 (c) Theft of cargo or equipment from trucks owned by small  
40 trucking firms, and criminal penalties imposed for such crimes;

41 (d) Exemption from rules imposed by the Department of



42 Environmental Protection restricting truck washing, for small  
43 trucking firms;

44 (e) Development of rules to be adopted by the Department of  
45 Transportation regarding random inspection of trucks owned by  
46 small trucking firms and prohibiting the use of any "target  
47 list" to determine which trucks are inspected; and

48 (f) Improving access to Department of Highway Safety and  
49 Motor Vehicles' offices that provide International Registration  
50 Plan registration and renewal services to motor carriers,  
51 whether through increased use of technology or by any other  
52 means.

53 (4) The workgroup is abolished on November 1, 2011.

54 Section 4. This act shall take effect July 1, 2011.

56 ===== T I T L E A M E N D M E N T =====

57 And the title is amended as follows:

58 Delete everything before the enacting clause  
59 and insert:

60 A bill to be entitled  
61 An act relating to trucking; providing a short title;  
62 defining the term "small trucking firm"; creating the  
63 Trucking Regulation Workgroup; providing for  
64 membership of the workgroup; directing the workgroup  
65 to make a report to the Governor, the Speaker of the  
66 House of Representatives, and the President of the  
67 Senate by a certain date; providing requirements of  
68 the report; providing for termination of the  
69 workgroup; providing an effective date.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Transportation Committee

BILL: SB 1912

INTRODUCER: Senator Evers

SUBJECT: Trucking

DATE: March 25, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Spalla	TR	<b>Pre-meeting</b>
2.	_____	_____	EP	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill, the “Small Trucker Relief Act” creates undesignated sections of statute to:

- define the term “small trucking firm” to mean a trucking firm that:
  - is family owned,
  - employs fewer than 30 persons, or
  - has fewer than 10 trucks in operation.
  
- direct county tax collector’s office to act as the agent for the Department of Highway Safety and Motor Vehicles (DHSMV) to issue and renew the registration license plates for trucks owned, and Commercial Driver’s Licenses (CDL) for employees of, small trucking firms.
  
- prohibit a penalty or fine from being assessed for idling if the truck is owned by a small trucking firm.
  
- direct the Department of Environmental Protection (DEP) to issue, upon application by a small trucking firm, a waiver exempting the firm from DEP restrictions on the washing of trucks.
  
- grant an annual credit against corporate income taxes imposed in ch. 220, F.S., to small trucking firms that make application for the credit. The credit is to be equal to the value of the time and amount of fuel consumed while idling.

- provide that any person who engages in theft of cargo or equipment from a small trucking firm commits a felony of the second degree. In addition to the punishments prescribed in ss. 775.082, 775.083, or 775.084, F.S., for each occurrence, a violator is to be sentenced to no less than five years in prison and fined \$100,000.
- creates the Trucking Regulation Workgroup to identify rules and regulations that can be removed without affecting public safety. The workgroup consists of the Secretary of the Florida Department of Transportation (FDOT), and an owner or employee of a small trucking firm, appointed by the Governor.
- authorize FDOT to inspect trucks randomly but may not use a “target list” when determining which trucks to inspect.

This bill creates several undesignated sections of the Florida Statutes.

## II. Present Situation:

### **Commercial Vehicle Washing and Stormwater Discharge**

Wastewater (including wash water) from any type of vehicle and equipment cleaning can contain significant amounts of substances such as oil and grease, petroleum products, suspended solids such as dirt and grit, heavy metals, detergents, and other pollutants. These contaminants may cause pollution of surface water or ground water and result in violations of water quality standards if the wastewater is not properly managed. Federal and state regulations exist to minimize the adverse effects of the discharge from wastewater from vehicle washing operations.

A stationary washing facility is a permanent fixed location where vehicles are driven for washing. Stationary facilities may include commercial car washes for passenger vehicles and commercial or industrial vehicle wash facilities for large trucks and heavy equipment. Alternatively, mobile vehicle and equipment washing involves washing at a location where vehicles are based (such as a trucking company, warehouse, bus station, vehicle dealership, fairgrounds, etc.) or at an intermediate location where the washing crew and vehicle owners meet solely for the purpose of washing vehicles (such as a business parking lot, gas station, etc.).

#### *National Pollutant Discharge Elimination System*

The U.S. Environmental Protection Agency (EPA) authorizes the Florida Department of Environmental Protection (DEP) to implement the National Pollutant Discharge Elimination System (NPDES) stormwater permitting program in the State of Florida. The program regulates point source discharges of stormwater runoff from certain industrial facilities, including certain vehicle washing operations. The operators of regulated industrial facilities must obtain an NPDES stormwater permit and implement appropriate pollution prevention techniques to reduce contamination of stormwater runoff.

As the NPDES stormwater permitting authority, DEP is responsible for promulgating rules and issuing permits, managing and reviewing permit applications, and performing compliance and enforcement activities. Accordingly, DEP has established a General Permit for Car Wash Systems by rule (ch. 62-660.803, F.A.C.) which provides for exemptions, requirements, and best management practices for vehicle washing operations.

**Truck Idling**

Due to federal and state hours-of-service (HOS) requirements, truck drivers often have long off-hour rest periods, which they often spend inside the cab of their trucks. Cab power is essential in order to control the temperature inside the cab and keep the drivers comfortable during the long rest periods.

The most common way drivers power their cabs is to idle, which means to continuously operate the vehicle's main drive engine while the vehicle is stopped. Idling functions to keep the fuel and engine warm; helps to keep the driver alert; mask out noises and smells; and provides safety. While idling helps keep the driver comfortable, it has a negative economic and environmental impact. Exhaust from diesel engines contains pollutants that negatively impact human health and the environment. Diesel engines emit large amounts of nitrogen oxides, particulate matter and air toxics, which contribute to serious public health problems. Idling also generates a great deal of noise.

Although several exemptions apply (*e.g.*, idling while sleeping or resting in a sleeper berth) owners or operators of heavy-duty diesel engine powered motor vehicles are prohibited by rule from idling for more than five consecutive minutes. (See FAC 62-285.420 for exemptions) First time offenders will be given a notice to comply without penalties. Complaint driven or repeat offenses may result in further enforcement action. Penalties will be assessed on a case by case basis.

Although an additional weight allowance is provided for auxiliary power units which obviate idling, the practice of idling is not currently prohibited by Florida Statute.

**Safety Inspections**

Safety inspections are conducted by the Florida Department of Transportation's (FDOT) Motor Carrier Compliance Office (MCCO) personnel and/or authorized agents at weigh stations and on the roadside. Officers follow a procedure established by the Commercial Vehicle Safety Alliance (CVSA) to inspect both the driver and/or vehicle(s). MCCO officers are authorized to inspect:

- Hazardous Materials Transportation
  - Placards, Markings, Labels, Spills, Leaks, Unsecured Cargo
- Brakes
  - Parking Brakes, Drums and Rotors, Hoses and Tubing, Low Air Warning Device, Tractor Protection Valve (All brakes must work and be properly adjusted. Brakes must be on all wheels if the truck or tractor was manufactured after July 25, 1980)
- Coupling Devices
  - Fifth Wheel, Pintle Hooks, Tow Bar, Safety Devices
- Fuel System
  - Leaks, Securely-Mounted Tanks, Filler Caps
- Rearview Mirrors
- Horn
- Lighting Devices
  - Stop Lights, Turn Signals, Headlights, Clearance Lights, Marker Lights

- Steering Mechanism
- Suspension
- Frame Members
- Body Components
- Tires and Wheels
- Windshield and Wipers
- Exhaust System
- Emergency Equipment
  - Reflectors, Fire Extinguisher
- Load Secured

When determining whether a vehicle is to be inspected and how thorough the inspection is, MCCO officers may consult the federally-maintained Comprehensive Safety Analysis database which is made available to insurers, shippers, law enforcement, and other parties interested in a carrier's safety record. The database ranks a given carrier's compliance and safety record as "good", "questionable", or "poor". The Federal Motor Carrier Safety Administration (FMCSA) recommends thorough inspection of vehicles maintained by carriers whose records are "poor".

### III. Effect of Proposed Changes:

Section 1 of the bill allows for the act to be cited as the "Small Trucker Relief Act."

Section 2 of the bill defines the term "small trucking firm" in subsection (1) to mean a trucking firm that:

- is family owned,
- employs fewer than 30 persons, or
- has fewer than 10 trucks in operation.

Subsection (2) directs the applicable county tax collector's office to act as the agent for the DHSMV to issue and renew the registration license plates for trucks owned, and CDLs for employees of, small trucking firms.

Subsection (3) prohibits a penalty or fine from being assessed for idling if the truck is owned by a small trucking firm.

Subsection (4) directs DEP to issue, upon application by a small trucking firm, a waiver exempting the firm from DEP restrictions on the washing of trucks.

Subsection (5) grants an annual credit against corporate income taxes imposed in ch. 220, F.S., to small trucking firms that make application for the credit. The credit is to be equal to the value of the time and amount of fuel consumed while idling.

Subsection (6) provides that any person who engages in theft of cargo or equipment from a small trucking firm commits a felony of the second degree. In addition to the punishments prescribed

in ss. 775.082, 775.083, or 775.084, F.S., for each occurrence, a violator is to be sentenced to no less than five years in prison and fined \$100,000.

Section 3 creates the Trucking Regulation Workgroup consisting of two members:

- The Secretary of FDOT, or the Secretary's representative; and
- An owner or employee of a small trucking firm, appointed by the Governor.

The workgroup is charged with identifying rules and regulations that can be removed without affecting public safety. The workgroup is to provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than October 1, 2011.

Section 4 authorizes FDOT to inspect trucks randomly but may not use a "targeted list" when determining which trucks to inspect.

Section 5 establishes an effective date of July 1, 2011.

**Other Potential Implications:**

The definition of "small trucking firm" could be interpreted to include relative large trucking firms by its use of the disjunctive word "or," *i.e.*, of the following, only one need be satisfied to be considered a small trucking firm.

- is family owned,
- employs fewer than 30 persons, *or*
- has fewer than 10 trucks in operation.

Family-owned trucking firms can be quite large.

Under current law (s. 812.014(2)(a)1., F.S.) a person who engages in the theft of cargo or equipment with a value of more than \$100,000 commits a first degree felony. This bill would reduce that act to a second degree felony if the cargo or equipment were the property of or under the control of a small trucking firm.

According to DEP, the agency cannot provide an exemption for the discharge of pollutants from wash waters directly to surface waters since federal regulations (*i.e.*, the NPDES regulations) do not allow such exemptions. However, DEP has developed a best management practice (BMP) document for vehicle washing. Practices defined in the BMP when implemented, provide that wash waters either be percolated into the ground or collected and managed off-site and no pollutants would be discharged directly to surface waters. Operations implementing the BMP provisions are generally not required to obtain NPDES or other state wastewater permits. The BMPs were developed for mobile vehicle washing operations, but would have applicability to truck washing at small truck firms that would either contract for washing (*e.g.* mobile truck washing), or conduct vehicle washing on their own.

The Department of Revenue (DOR) notes that no authority is provided to adopt rules. However, rules would likely be needed to administer the tax credit authorized in Section 2 of the bill.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The bill does not address how the corporate income tax credit is to be documented. According to DOR:

The cost value of the time and amount of fuel consumed during idling needs to be calculated and documented. The trucking firm would be required to document the amount of time a truck spends idling and the cost of the fuel used by a truck idling.

Other observations made by DOR include:

- The bill does not address when the applicant is to apply for the credit, or if the applicant must apply each tax year to claim the credit.
- The bill does not address what happens if the credit exceeds the amount owed on a tax return.
- The bill does not place the provisions addressing the corporate income tax credit in ch. 220, F.S., where all other such credits are located.
- The bill does not state in what order the credit is to be claimed relative to other tax credits an applicant may be eligible to claim.
- Although the bill's effective date is July 1, 2011, the bill does not address how the tax credit is to be applied (*i.e.*, is it applicable to the 2010/2011 tax year, or to subsequent years only.)

**B. Private Sector Impact:**

Owners of small trucking firms will experience indeterminate but positive fiscal impacts from the corporate income tax credit provided by the bill.

**C. Government Sector Impact:**

It is not clear how many taxpayers would qualify for the corporate income tax credit provided by the bill. According to DOR,

(T)here are a limited number of small trucking firms that pay corporate income tax, so it is anticipated that the statement of estimated regulatory costs should not exceed \$1 million in the aggregate within five years of implementation.

According to DHSMV:

This bill gives legislative authority to tax collectors to issue license plates and registration renewals for trucks owned by small trucking firms, as well as issuing commercial driver licenses to the employees of those firms; however, tax collectors currently have the authority to act as DHSMV's agent for these processes.

Therefore, the bill will have no impact on local government.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Transportation Committee

BILL: SB 1190  
 INTRODUCER: Senator Detert and others  
 SUBJECT: Driver's Licenses and Identification Cards  
 DATE: April 1, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	<b>Favorable</b>
2.	Davis	Spalla	TR	<b>Pre-meeting</b>
3.			BC	
4.				
5.				
6.				

**I. Summary:**

This bill allows a veteran who presents proof of military service and pays an additional \$1 fee to the Department of Highway Safety and Motor Vehicles (DHSMV) to receive a capital "V" on his or her driver license or identification card.

This bill substantially amends the following sections of the Florida Statutes: 322.14 and 322.051.

**II. Present Situation:**

**Issuance of Florida Identification Cards and Driver Licenses**

Sections 322.051 and 322.08, F.S., provide requirements for the issuance of an identification card or driver's license. An applicant must submit the following proof of identity:

- 1) Full name (first, middle or maiden, and last), gender, proof of social security card number satisfactory to the department, county of residence, mailing address, proof of residential address satisfactory to the department, country of birth, and a brief description;
- 2) Proof of birth date satisfactory to the department; and
- 3) Proof of identity satisfactory to DHSMV. Such proof must include one of the following documents issued to the applicant:
  - a) A driver's license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required under sub-subparagraphs b. through g., below;
  - b) A certified copy of a United States birth certificate;
  - c) A valid, unexpired United States passport;

- d) A naturalization certificate issued by the United States Department of Homeland Security;
- e) A valid, unexpired alien registration receipt card (green card);
- f) A Consular Report of Birth Abroad provided by the United States Department of State;
- g) An unexpired employment authorization card issued by the United States Department of Homeland Security; or
- h) Proof of nonimmigrant classification provided by the United States Department of Homeland Security, for an original identification card. In order to prove such nonimmigrant classification, applicants may produce but are not limited to the following documents:
  - A notice of hearing from an immigration court scheduling a hearing on any proceeding.
  - A notice from the Board of Immigration Appeals acknowledging pendency of an appeal.
  - Notice of the approval of an application for adjustment of status issued by the United States Bureau of Citizenship and Immigration Services.
  - Any official documentation confirming the filing of a petition for asylum or refugee status or any other relief issued by the United States Bureau of Citizenship and Immigration Services.
  - Notice of action transferring any pending matter from another jurisdiction to Florida, issued by the United States Bureau of Citizenship and Immigration Services.
  - Order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States including, but not limited to asylum.
  - Evidence that an application is pending for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States, if a visa number is available having a current priority date for processing by the United States Bureau of Citizenship and Immigration Services.
  - On or after January 1, 2010, an unexpired foreign passport with an unexpired United States Visa affixed, accompanied by an approved I-94, documenting the most recent admittance into the United States.

The resulting driver license must contain a color photograph of the licensee, the name of the state, a unique identification number, and the licensee's full name, date of birth, and residence address.<sup>1</sup>

### **Veterans in Florida**

Florida has the third largest population of veterans in the nation with more than 1.6 million. Only California and Texas have larger populations of veterans.<sup>2</sup> Section 1.01(14), F.S., defines the term "veteran" as a person who served in the active military, naval, or air service and who was

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<sup>1</sup> Section 322.14, F.S.

<sup>2</sup> Florida Department of Veterans' Affairs. 2009-10 Annual Report. Available at: [http://www.floridavets.org/pdf/ann\\_rprt\\_10.pdf](http://www.floridavets.org/pdf/ann_rprt_10.pdf)

discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges.

### **III. Effect of Proposed Changes:**

This bill amends s. 322.14, F.S., to permit a veteran to request a capital "V" on his or her driver license. This bill amends s. 322.051, F.S., to permit a veteran to request a capital "V" on his or her identification card.

In order to receive a capital "V" on either of these documents, the bill requires a veteran to present his or her DD Form 214 (a "Certificate of Release or Discharge from Active Duty," promulgated by the United States Department of Defense) to DHSMV, along with an additional \$1 fee.

This bill provides an effective date of July 1, 2011.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

Veterans who desire a capital "V" on their driver license or identification card will be charged an additional \$1 fee.

#### **C. Government Sector Impact:**

The Department of Highway Safety and Motor Vehicles believes that implementing this legislation will require in-house programming modifications that will be managed within

existing workload. However, this bill will also require contracted programming to the driver license issuance system at a cost of \$35,000 to implement.<sup>3</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>3</sup> Department of Highway Safety and Motor Vehicles. *Agency Senate Bill 1190 Analysis*. (March 9, 2011, on file with the Senate Transportation Committee).

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Transportation Committee

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BILL: SB 1530

INTRODUCER: Senator Altman

SUBJECT: Driver's Licenses

DATE: April 1, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

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**I. Summary:**

Senate Bill 1530 creates the “Mature Drivers Act.” In addition, the bill revises the age requirements for issuance of learner’s driver’s licenses and driver’s licenses. The bill prohibits the Department of Highway Safety and Motor Vehicles (DHSMV or department) from issuing a driver’s license to a person who is under 17 years of age instead of 16 years of age. In addition, a person must be at least 16 years old to be eligible for a learner’s driver’s license.

This bill substantially amends, sections of the Florida Statutes: 322.05, 322.126, 322.161, and 322.1615.

**II. Present Situation:**

**Graduated Licensing**

“Graduated licensing” is a system designed to delay full licensure while allowing beginners to obtain their initial experience under lower risk conditions<sup>1</sup> and introduce them to more complex driving situations. There are three stages: a minimum supervised learner's period, an intermediate license (once the driving test is passed) that limits unsupervised driving in high-risk situations, and finally a full-privilege driver's license available after completion of the first two stages. Beginners must remain in each of the first two stages for set minimum time periods. Forty-six U.S. states and the District of Columbia currently have all three stages, but the systems vary in strength.<sup>2</sup> According the Insurance Institute for Highway Safety, in an optimal system, the minimum age for a learner's permit is 16; the learner stage lasts at least 6 months, during which

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<sup>1</sup> See <http://www.iihs.org/laws/GraduatedLicenseIntro.aspx> (last visited April 2, 2011.)

<sup>2</sup> *Id.*

parents must certify at least 30-50 hours of supervised driving; and the intermediate stage lasts until at least age 18 and includes both a night driving restriction starting at 9 or 10 p.m. and a strict teenage passenger restriction allowing no teenage passengers, or no more than one teenage passenger.

**State Graduated Licensing Laws, as of March 2011<sup>3</sup>**

<i>State/ Jurisdiction</i>	<i>Minimum Entry Age for a Learners Permit</i>	<i>Mandatory Holding Period</i>	<i>Learner Stage with a Minimum Amount of Supervised Driving Required - # of hours of supervised drive time</i>	<i>Intermediate Stage Minimum Age for Driver's License</i>
Alabama	15	6 mo	30 hr (none with driver education)	16
Alaska	14	6 mo	40 hr, 10 of which must be at night or in inclement weather	16
Arizona	15, 6 mo	6 mo	30 hr, 10 of which must be at night (none with driver education)	16
Arkansas	14	6 mo	None	16
California	15, 6 mo	6 mo	50 hr, 10 of which must be at night	16
Colorado	15	12 mo	50 hr, 10 of which must be at night	16
Connecticut	16	6 mo (4 mo with driver education)	40 hr	16, 4 mo
Delaware	16	6 mo	50 hr, 10 of which must be at night	16, 6 mo
District of Columbia	16	6 mo	40 hr in learner's stage, 10 hr at night in intermediate stage	16, 6 mo
Florida	15	12 mo	50 hr, 10 of which must be at night	16
Georgia	15	12 mo	40 hr, 6 of which must be at night	16
Hawaii	15, 6 mo	6 mo	50 hr, 10 of which must be at night	16
Idaho	14, 6 mo	6 mo	50 hr, 10 of which must be at night	15
Illinois	15	6 mo	50 hr, 10 of which must be at night	16
Indiana	15, 6 mo	6 mo	50 hr, 10 of which must be at night	16, 6 mo (16, 9 mo without driver ed)
Iowa	14	6 mo	20 hr, 2 of which must be at night	16
Kansas	14	12 mo	25 hr in learner phase; 25 hr before age 16; 10 of the 50 hr must be at night	16
Kentucky	16	6 mo	60 hr, 10 of which must be at night	16, 6 mo
Louisiana	15	6 mo	50 hr, 15 of which must be at night	16
Maine	15	6 mo	35 hr, 5 of which must be at night	16
Maryland	15, 9 mo	9 mo	60 hr, 10 of which must be at night	16, 6 mo
Massachusetts	16	6 mo	40 hr	16, 6 mo
Michigan	14, 9 mo	6 mo	50 hr, 10 of which must be at night	16
Minnesota	15	6 mo	30 hr, 10 of which must be at night	16
Mississippi	15	12 mo	None	16
Missouri	15	6 mo	40 hr, 10 of which must be at night	16
Montana	14, 6 mo	6 mo	50 hr, 10 of which must be at night	15
Nebraska	15	6 mo	50 hr, 10 of which must be at night (none with driver education)	16
Nevada	15, 6 mo	6 mo	50 hr, 10 of which must be at night	16
New Hampshire	15, 6 mo <sup>4</sup>	None	40 hr, 10 of which must be at night	16

<sup>3</sup> Insurance Institute for Highway Safety, *Licensing Ages and Graduated Licensing Systems*. See [http://www.iihs.org/laws/pdf/us\\_licensing\\_systems.pdf](http://www.iihs.org/laws/pdf/us_licensing_systems.pdf) (last visited April 2, 2011.)

<sup>4</sup> In New Hampshire, learner's permits are not issued. At age 15, and six months, a person can drive while supervised by a licensed driver 25 or older.

New Jersey	16	6 mo	None	17
New Mexico	15	6 mo	50 hr, 10 of which must be at night	15, 6 mo
New York	16	6 mo	50 hours, 15 of which must be at night	16, 6 mo
North Carolina	15	12 mo	None	16
North Dakota	14	6 mo	None	16 <sup>5</sup>
Ohio	15, 6 mo	6 mo	50 hr, 10 of which must be at night	16
Oklahoma	15, 6 mo	6 mo	50 hr, 10 of which must be at night	16
Oregon	15	6 mo	50 hr (100 hr without driver education)	16
Pennsylvania	16	6 mo	50 hr	16, 6 mo
Rhode Island	16	6 mo	50 hr, 10 of which must be at night	16, 6 mo
South Carolina	15	6 mo	40 hr, 10 of which must be at night	15, 6 mo
South Dakota	14	6 mo (3 mo with driver education)	None	14, 6 mo (14, 3 mo with driver education)
Tennessee	15	6 mo	50 hr, 10 of which must be at night	16
Texas	15	6 mo	20 hr, 10 of which must be at night	16
Utah	15	6 mo	40 hr, 10 of which must be at night	16
Vermont	15	1 yr	40 hr, 10 of which must be at night	16
Virginia	15, 6 mo	9 mo	45 hr, 15 of which must be at night	16, 3 mo
Washington	15	6 mo	50 hr, 10 of which must be at night	16
West Virginia	15	6 mo	50 hr, 10 of which must be at night (none with driver education)	16
Wisconsin	15, 6 mo	6 mo	30 hr, 10 of which must be at night	16
Wyoming	15	10 days	50 hr, 10 of which must be at night	16

### Generally

According to the Florida Department of Highway Safety and Motor Vehicles (DHSMV or department), drivers age 15 to 19 in the state of Florida have the highest rate per 10,000 licensed drivers of crash involvement and the second highest rate in fatal crashes. Sixteen-year-old drivers have crash rates three times greater than 17-year-old drivers, five times greater than 18-year-old drivers, and twice the rate of 85-year-old drivers, according to National Highway Traffic Safety Administration (NHTSA). Based on research by NHTSA, “immaturity and inexperience are primary factors contributing to these deadly crashes by young drivers.”<sup>6</sup>

Under current Florida law, the following operating restrictions are placed on a minor’s driver’s license:

- 15 years old (learner’s permit) - May operate a vehicle only during daylight hours, but after 3 months, may operate a vehicle until 10 p.m. Must be accompanied by a holder of a valid driver’s license who is at least 21 years of age.
- Under the age of 17 - Must be accompanied by a holder of a valid driver’s license who is at least 21 years of age during the hours of 11:01 p.m. and 5:59 a.m., unless driving to or from work.

<sup>5</sup> There is no intermediate stage in North Dakota. The minimum license age is 16, but a parent may request a restricted license as early as 14, 6 months. The sole restriction is that the licensee may only drive a vehicle owned by the parent.

<sup>6</sup> <http://www.nhtsa.gov/Driving+Safety/Driver+Education/Teen+Drivers/Teen+Drivers++Graduated+Driver+Licensing> (last visited April 3, 2011.)

- 17 years old - Must be accompanied by a holder of a valid driver's license who is at least 21 years of age during the hours of 1:01 a.m. and 4:59 a.m., unless driving to or from work.

### **Florida Learner Driver's License**

Section 322.1615, F.S., provides the requirements for, and limitations of, a learner's driver's license. Specifically, in order to obtain a learner's driver's license issued by DHSMV, a person must be at least 15 years of age and have:

- Passed the written examination for a learner's license;
- Passed the vision and hearing tests;
- Completed the traffic law and substance abuse course; and
- Meets all other requirements in law.

Drivers holding a learner driver's license must be accompanied by a fully licensed driver who is at least 21 years old and occupies the nearest seat to the right of the learning driver.<sup>7</sup> Holders of a learner driver's license may only operate a vehicle during daylight hours for the first 3 months of their licensure. Following the first three months, learning drivers may operate a vehicle from dawn until 10 p.m.<sup>8</sup> A licensee who violates these requirements is subject to the civil penalty imposed for a moving violation, as provided in chapter 318, F.S.<sup>9</sup>

### **Florida Driver's License**

To earn an operator's license, a driver must be at least 16 years old and have held a learner's license for at least one year without any traffic convictions (or attended a traffic driving school if he or she had a moving traffic conviction) and he or she has complied with the school attendance requirements, as provided in s. 322.091, F.S.<sup>10</sup> A parent or guardian must certify the teen has completed at least 50 hours of behind the wheel driving experience, of which 10 hours must have been at night.<sup>11</sup> The DHSMV may also issue licenses to persons who are 16 or 17 years of age if they already possess a driver's license from another state or foreign jurisdiction.<sup>12</sup>

### **Reports of Disability**

Section 322.126(2), F.S., authorizes a physician, person, or agency to report to DHSMV if they have knowledge of a licensee's or applicant's (over 15 years of age) mental or physical disability to drive or need to wear medical identification bracelet that could affect his or her driving ability.

### **High-Risk Drivers**

Section 322.161, F.S., requires DHSMV to restrict the driving privilege of any Class E licensee who is 15 to 17 years of age and who has accumulated six or more points within a 12-month period.

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<sup>7</sup> Section 322.1615(2), F.S.

<sup>8</sup> Section 322.1615(3), F.S.

<sup>9</sup> Section 322.1615(4), F.S.

<sup>10</sup> Section 322.05, F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

### III. Effect of Proposed Changes:

**Section 1.** Creates the “Mature Drivers Act.”

**Section 2.** Amends s. 322.05, F.S., to increase the age requirement from 16 years of age to 17 years of age to be eligible for a driver’s license. In addition, this section is amended to increase the age requirement from 15 years of age to 16 years of age to be eligible for a learner’s driver’s license.

**Section 3.** Amends s. 322.126, F.S., to conform to provisions increasing the minimum age requirements for a learner’s driver’s license and a driver’s license. Specifically, this section is amended to authorize a physician, person, or agency to report to DHSMV if they have knowledge of a licensee’s or applicant’s (*16 years of age or older*) mental or physical disability to drive or need to wear medical identification bracelet that could affect his or her driving ability.

**Section 4.** Amends s. 322.161, F.S., to conform to provisions increasing the minimum age requirements for a learner’s driver’s license and a driver’s license. Specifically, this section is amended to require DHSMV to restrict the driving privilege of any Class E licensee who has not attained 18 years of age and who has accumulated six or more points within a 12-month period.

**Section 5.** Amends s. 322.1615, F.S., to increase the age to obtain a learner’s driver’s license from 15 years of age to 16 years of age.

**Section 6.** Provides an effective date of July 1, 2011.

**Other Potential Implications:**

According to DHSMV, in Fiscal Year (FY) 2009-10, the department issued 97,791 learner’s driver’s licenses to 15 year olds. If enacted, there will be a revenue loss of \$4,693,968 in the General Revenue Fund in FY 2011-12 resulting from those 15 year olds who would not be issued a learner’s driver’s license in the year that the bill takes effect.<sup>13</sup>

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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<sup>13</sup> Department of Highway Safety and Motor Vehicles, *Agency Bill Analysis: SB 1530*, (on file with the Senate Transportation Committee.)

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Persons will not be eligible for a learner's driver's license until 16 years of age. Persons will not be eligible for a driver's license until 17 years of age.

This bill could reduce the number of deaths and injuries suffered by drivers under the age of 17 in traffic crashes. Historically, a large percentage of drivers ages 15 to 20 are involved in traffic crashes. Lack of experience behind the wheel is often cited as a major factor in these crashes.

**C. Government Sector Impact:**

According to DHSMV, enactment of this bill will defer revenues collected for driver license issuance and certain driver education courses in the year of implementation due to revised age requirements.<sup>14</sup>

According to DHSMV, in FY 2009-10, the department issued 97,791 learner's driver's licenses to 15 year olds. The fee for an original driver license is \$48 which is deposited into the General Revenue Fund. The proposed revisions to driver age requirements for license issuance will result in a nonrecurring revenue loss of \$4,693,968 to the General Revenue Fund. In addition, Florida driver's license applicants must currently complete a Traffic Law and Substance Abuse Education (TLSAE) course or a Department of Education driver's education course offered pursuant to s. 1003.48, F.S., as a requirement prior to licensure. Each provider of the TLSAE course collects a \$3 assessment fee which is deposited into the Highway Safety Operating Trust Fund. Since learner's driver license applicants will not be eligible to obtain a permit until 16 years of age, this will result in revenue deferment of \$146,688 assuming that half of the population receiving a learner's driver license attended a TLSAE course.

The Department of Highway Safety and Motor Vehicles believes that implementing this legislation will require in-house programming modifications that will be managed within the existing workload

**VI. Technical Deficiencies:**

None.

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<sup>14</sup> *Id.*

**VII. Related Issues:**

In order to allow sufficient time for implementation of necessary programming modification, the department recommends the effective date of the bill be changed to January 1, 2012.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Transportation Committee

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BILL: SB 2012

INTRODUCER: Senator Braynon

SUBJECT: Specialty License Plates

DATE: March 31, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sookhoo	Spalla	TR	<b>Pre-meeting</b>
2.			EP	
3.			BC	
4.				
5.				
6.				

**I. Summary:**

The bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to develop the “Go Green” specialty license plate – An annual use fee of \$25 per tag shall be distributed to the Coalition for Renewable Energy Solutions, Inc., to fund programs and projects that publicize renewable energy solutions and encourage a cleaner and safer environmental future. This bill substantially amends ss. 320.008056 and 320.08058 of the Florida Statutes.

**II. Present Situation:**

**Specialty License Plates**

The Florida Legislature created the first specialty license plates in 1986, one commemorating the seven astronauts who died when the space shuttle Challenger exploded after lift-off, and one for each of the nine universities then in the state university system.

Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. Annual use fees ranging from \$15 to \$25, paid in addition to required license taxes and service fees, are distributed to an organization in support of a particular cause or charity signified in the plate’s design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

Section 320.08053, F.S., provides an organization seeking authorization to establish a specialty license plate must meet the following preliminary requirements<sup>1</sup>:

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<sup>1</sup> Florida Department of Highway Safety and Motor Vehicles RS-20 (<http://www3.flhsmv.gov/DMV/Proc/RS/RS-20.pdf>)

- Contact the Division of Motor Vehicles, Specialty License Plate office for creation information.
- Section 320.08053(1)(a), Florida Statutes, requires a request for the particular specialty license plate being sought, describing the proposed specialty license plate in specific terms.
- Section 320.08053(1)(a), Florida Statutes, requires a sample plate that conforms to the specifications set by the department and chapter 320.08053, Florida Statutes and that is in substantially final form.
- Section 320.08053(1)(b), Florida Statutes, requires an application fee, not to exceed \$60,000, to defray the department's cost for reviewing the application and developing the specialty license plate, if authorized. State funds may not be used to pay the application fee, except for collegiate specialty license plates authorized in s. 320.08058(3) and (13).
- Section 320.08053(1)(c), Florida Statutes, requires a marketing strategy outlining short-term and long-term marketing plans for the requested specialty license plate and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the sale of the requested specialty license plate. The information requested under this subsection must be submitted to the department at least 90 days before the convening of the next regular session of the Legislature.

In 2008, the Legislature passed SB 1992, which included a moratorium on the issuance of specialty plates by DHSMV. The moratorium is effective from July 1, 2008 to July 1, 2011, but contains an exception “for [any] specialty license plate proposal which has submitted a letter of intent to the DHSMV prior to May 2, 2008” or “which was included in a bill filed during the 2008 Legislative Session.”<sup>2</sup> There were 12 organizations which met the moratorium exceptions; however, only one organization’s specialty license plate was enacted during the 2009 Session<sup>3</sup>.

Section 320.08056, F.S., provides DHSMV is responsible for developing the specialty license plates and must begin production and distribution within one year after approval of the specialty license plate by the Legislature. Specialty license plates must bear the design required by law for the appropriate specialty plate, and the designs and colors must be approved by DHSMV. In addition, the specialty license plate must bear the imprint of numerals from 1 to 999, inclusive, capital letters “A” through “Z”, or a combination thereof.

DHSMV is authorized to annually retain the first proceeds derived from the annual use fees collected in an amount sufficient to defray each specialty plate’s pro rata (proportionate) share of DHSMV’s costs directly related to issuing the specialty license plate. A person wishing to

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<sup>2</sup> S. 45, 2008-176, Laws of Florida

<sup>3</sup> Organizations that have met the moratorium exceptions, but have not been legislatively authorized include: Coalition for Renewable Energy Solutions – “Go Green”, East Coast Surfing Hall of Fame and Museum – “Let’s Go Surfing”, Florida Horse Park – “Discover Florida’s Horses”, Fraternal Order of Police – “Fraternal Order of Police”, Guy Harvey Ocean Foundation – “Catch Me Release Me”, Surfing Evolution and Preservation – “Endless Summer”, St. Johns River Alliance – “St. Johns River”, Florida Biodiversity Foundation – “Save Wild Florida”, Sons of Confederate Veterans – “Confederate Heritage”, Toomey Foundation for the Natural Sciences – “Preserving the Past”, and Toomey Foundation for the Natural Sciences – “Trinity”. The University of Miami - Center for Autism and Related Disabilities – “Autism Awareness” specialty license plate was created during the 2009 Session (see 2009-71, L.O.F.).

purchase a specialty license plate must pay, in addition to the required license plate fee and license tax, a license plate annual use fee (from \$15 to \$25) and a processing fee of \$5.

In an effort to manage the number of specialty license plates and to eliminate those less popular the Legislature during the 2004 Session enacted SB 2020 which provides DHSMV must discontinue the issuance of an approved specialty plate if the number of valid specialty license plates in use falls below 1,000 plates for at least 12 consecutive months. DHSMV is authorized to discontinue the issuance and distribution of specialty plates if the organization no longer exists, if the organization has stopped providing services authorized to be funded, or if the organization requests it. To date, only four plates have ever been discontinued for lack of sales. These plates are the Girl Scouts plate, the Orlando Predators plate, and the Tampa Bay Storm plate, and the Corrections Foundation plate.

Annual use fees, or any interest earned from those fees, may be used by the authorized organization for public or private purposes; however, the annual fees may not be used for commercial or for-profit activities, or for general administrative expenses (except as specifically authorized or to pay the cost of the audit or report required to ensure the proceeds are used as authorized).

Section 320.08058, F.S., lists the approved specialty license plates and specifies funding requirements.

Section 320.08062, F.S., requires all organizations receiving annual use fee proceeds from DHSMV to be responsible for ensuring proceeds are used in accordance with ss. 320.08056 and 320.08058, F.S. Each organization is either subject to an audit or is required to annually attest, under penalties of perjury, that such proceeds were used correctly. DHSMV can examine all records pertaining to the use of specialty license plate revenues.

### **The Coalition for Renewable Energy Solutions**

The Coalition for Renewable Energy Solutions (CRES), based in Palm Beach Gardens, is a Florida nonprofit organization founded to create, encourage and support productive public-private relationships in the pursuit of a sustainable world. CRES has decided to step in and step up to assist in encouraging the development of ideas, informed education and the implementation of programs regarding viable renewable energy and 'Green' solutions, including solar energy.

DHSMV has found the "Go Green" license plate has met the application requirements and falls within the exception from the moratorium on new specialty license plates created by the 2008 Legislature, as the Foundation submitted its materials before May 2, 2008. In 2010, the legislature did not pass CS/SB 1986 which directed DHSMV to create the Go Green license plate. DHSMV sent a fee refund to the Coalition for Renewable Energy Solutions, Inc. on July 6, 2010, for the \$60,000.00 application fee. The check was not cashed and has been voided by the Coalition for Renewable Energy Solutions, Inc., and DHSMV has been notified of the intent to further pursue the application.<sup>4</sup> According the DHSMV agency analysis of SB 2012, because a

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<sup>4</sup> Correspondence from Michael Towner of the Coalition for Renewable Energy Solutions, Inc. dated April 1, 2011. On file with the Florida Senate Committee on Transportation.

refund was issued and no new application was filed, the Go Green license plate is no longer eligible for the specialty license plate.

### III. Effect of Proposed Changes:

The bill authorizes DHSMV to develop and issue a Coalition for Renewable Energy Solutions, Inc., license plate titled "Go Green." Drivers can purchase the specialty plate upon payment of the appropriate license taxes and fees and a \$25 annual use fee.

The bill creates the "Go Green" specialty license plate. The annual use fee is \$25. The annual use fees will be distributed to the Coalition for Renewable Energy Solutions, Inc. The coalition will retain all revenue from the annual use fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, up to 10% of the annual use fees may be used for administrative costs directly associated with the operation of the coalition and promotion and marketing of the plate. Remaining fees will be used to fund programs and projects that educate the public and implement or publicize renewable energy solutions.

The bill will take effect July 1, 2011.

#### **Other Potential Implications:**

On March 30, 2011, United States District Judge John Antoon, II, issued an order that found s. 320.08053, F.S., unconstitutional under the overbreadth doctrine. His ruling was based on the finding that s. 320.08053, F.S., "implicates private speech rights and provides the Legislature with unfettered discretion to engage in viewpoint discrimination when declining to approve a specialty license plate application".<sup>5</sup> Section 320.08053, F.S., prescribes the requirements an organization must follow in order to obtain a specialty license plate. In light of this ruling, the requirements for successful completion of an application to DHSMV for a specialty license plate are void.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>5</sup> *Sons of the Confederate Veterans, Florida Division, Inc. v. Jeffrey H. Atwater, et al.*, No. 6:09cv-134-Orl-28KRS (M.D. Fl. Mar. 30, 2011)

**D. Other Constitutional Issues:**

On March 30, 2011, United States District Judge John Antoon, II, issued an order that found s. 320.08053, F.S., unconstitutional under the overbreadth doctrine. His ruling was based on the finding that s. 320.08053, F.S., “implicates private speech rights and provides the Legislature with unfettered discretion to engage in viewpoint discrimination when declining to approve a specialty license plate application”. Section 320.08053, F.S., prescribes the requirements an organization must follow in order to obtain a specialty license plate. In light of this ruling, the requirements for successful completion of an application to DHSMV for a specialty license plate are void.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Should a person choose to purchase the Go Green license plate they will be assessed an annual fee of \$25.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Transportation Committee

BILL: SB 2036

INTRODUCER: Senator Braynon

SUBJECT: Uniform Traffic Control

DATE: April 3, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	<b>Pre-meeting</b>
2.			ED	
3.			BC	
4.				
5.				
6.				

**I. Summary:**

SB 2036 creates the “School Bus Safety Program,” authorizing a Florida school district to deploy school bus infraction detectors on its school buses for enforcing s. 316.172(1)(a) or s. 316.172(1)(b), F.S., when a driver fails to stop upon approaching any school bus which displays a stop signal. A school district deploying school bus traffic infraction detectors must coordinate the issuing of traffic citations with the Florida Highway Patrol, local sheriff’s office, local police department, local school board, if applicable, or any other entity having the authority and jurisdiction to enforce the traffic laws of this state and within the particular school district as provided in ss. 316.006 and 316.640, F.S. In addition, the bill authorizes Department of Highway Safety and Motor Vehicles (DHSMV or department), to use images from school bus traffic infraction detectors on any state road under the original jurisdiction of FDOT, when permitted by FDOT.

The bill provides processes regarding required notifications, the issuance of citations to registered owners of motor vehicles, and defenses available to vehicle owners. The bill provides a \$265 penalty for any violations of ss. 316.172(1)(a) or 316.172(1)(b), F.S., regardless of the method of enforcement. If the penalty is paid within 30 days of notification, the total penalty is \$265. However, if the penalty is not paid within 30 days of notification and a traffic citation is issued, the total penalty is \$265, plus court costs and fees of up to \$98, depending on the county where the offense occurs.

To the extent the department and school districts choose to permit the use of school bus traffic infraction detectors, there will be a fiscal impact for the cost of the installation and maintenance of the devices, the amount of which will vary depending on the negotiated agreement with any private vendor providing the equipment. There may be an increase in fine revenue for the school

districts and local governments choosing to permit the use of traffic infraction detectors, the amount of which is indeterminate and reliant on driver awareness and future behavior.

Each school district that operates a traffic infraction detector must submit an annual report to DHSMV which details the results of the detectors and the procedures for enforcement. DHSMV must subsequently submit an annual summary report to the Governor and Legislature. The report must include a review of the information submitted by the counties and municipalities and any recommendations or necessary legislation.

The bill provides a severability clause and is effective July 1, 2011.

This bill substantially amends ss. 316.003, 316.008, 316.640, 316.650, 318.14, 318.18, and 322.27 of the Florida Statutes.

Creates ss. 316.0084, 316.07457, 316.0777, 321.51 and a new unnumbered section of the Florida Statutes.

## II. Present Situation:

National statistics have consistently demonstrated that school buses constitute one of the safest forms of transportation. The National Research Council concluded that children are at far more risk traveling to and from school by bike, walking, or in private passenger vehicles -- especially if a teen-age driver is involved -- than in school buses.<sup>1</sup> According to the National Highway Traffic Safety Administration, approximately 450,000 public school buses travel approximately 4.3 billion miles to transport 23.5 million children to and from school and school-related activities.<sup>2</sup> On average, 20 school-age children die each year in school bus-related crashes or incidents. Of these 20, five of the children are injured inside the bus, five are struck by other vehicles, and 10 are struck by the school bus itself.<sup>3</sup> According to the Florida Department of Education (DOE), from the 1999-2000 to the 2009-2010 school years there have been four pedestrian students struck by a vehicle illegally passing a stopped school bus.<sup>4</sup> These statistics indicate that there's an opportunity for even this very safe form of travel to improve the safety of both the locations where students wait for the school bus and the routes students travel between home and the school bus stop.<sup>5</sup> Public health and traffic safety officials have examined the risks associated with school bus stops and noted the importance of carefully selecting bus stop locations.<sup>6</sup>

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<sup>1</sup> *The Relative Risks of School Travel: A National Perspective and Guidance for Local Community Risk Assessment.* Transportation Research Board, 2002.

<sup>2</sup> <http://www.nhtsa.gov/staticfiles/nti/buses/pdf/SelectingSchoolBusStopLocations.pdf>

<sup>3</sup> *Id.*

<sup>4</sup> Florida Department of Education, Florida Public School Bus Transportation-related Fatalities Multi-Year Summary (Updated 10/13/10).

<sup>5</sup> *Id.*

<sup>6</sup> Schieber RA, Vegega ME Reducing childhood pedestrian injuries: summary of a multidisciplinary conference. *Injury Prevention*, 2002; 8:13-110. [http://www.cdc.gov/ncipc/pub-res/childhood\\_pedestrian/child\\_pedestrian.htm](http://www.cdc.gov/ncipc/pub-res/childhood_pedestrian/child_pedestrian.htm)

Current law requires district school boards to establish school bus stops, or provide by district school board rule for establishing school bus stops, as needed at the most reasonably safe locations available.<sup>7</sup> Where unusual traffic hazards exist at school bus stops on roads maintained by the state outside of municipalities, the Department of Transportation (DOT) must place signs at the bus stops warning drivers of the location of the stops. The DOT must place these signs in concurrence and cooperation with and upon request of the district school board. According to the DOT, there are federal guidelines rather than requirements for states to use in placing “school bus ahead” signs.<sup>8</sup>

According to the DOE, documentation of stop locations and the specific procedures for ensuring stop safety are determined by the school district. Districts have safety professionals who review new stop locations or existing locations when there is an indication of a hazard. Some districts routinely review all stop locations. The DOE also notes that all school bus operators are trained and instructed to report hazards at stops.

According to DOE, in 2009-10, school districts reported that there were 293,126 public school bus stops in Florida.<sup>9</sup> There were 14,988 public school buses in daily service in 2009-10, equating to an average of 40 stops per day per bus (20 physical locations, morning and afternoon).<sup>10</sup>

#### **Failure to Stop for a School Bus**

Section 316.172(1)(a), F.S., provides a person commits a moving violation if a person driving a vehicle fails to stop when approaching any school bus while the bus is displaying a stop signal. A violation of this offense is punishable as provided in ch. 318, F.S. Currently, s. 318.18(5)(a), F.S., assesses a minimum \$100 civil penalty and an additional \$65 civil penalty for a driver who has been found guilty by the court for failing to stop for a school bus. The Department of Highway Safety and Motor Vehicles (DHSMV) must suspend the driver’s license of any person who commits a second or subsequent violation of this section within a five year period for not less than 90 days and not more than six months.

Section 316.172(1)(b), F.S., provides a person commits a moving violation if the person passes a school bus on the side children enter and exit while the bus is displaying a stop signal. A violation of this offense is punishable as provided in ch. 318, F.S., and requires a mandatory hearing. Section 318.18(5)(b), F.S., assesses a minimum \$200 civil penalty and an additional \$65 civil penalty for a violation of s. 316.172(1)(b), F.S. In addition, the DHSMV must suspend the driver’s license of any person who commits a violation of this section for not less than 180 days and not more than one year for a second or subsequent offense within a five year period.

According to DHSMV, in 2009, there were 3,533 citations for failure to stop for a school bus (s. 316.172(1)(a), F.S.) and 295 citations for passing a stopped school bus (s. 316.172(1)(b),

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<sup>7</sup> Section 1006.22(12)(c), F.S.

<sup>8</sup> *Manual on Uniform Traffic Control Devices*, U.S. Department of Transportation, Federal Highway Administration, <http://mutcd.fhwa.dot.gov/pdfs/2009/mutcd2009edition.pdf>

<sup>9</sup> Correspondence from Department of Education dated April 4, 2011.

<sup>10</sup> *Id.*

F.S.). These numbers are based on law enforcement observations. Reports of illegal “pass-by” of the school bus by bus operators or other non-law enforcement witnesses can be used for information and analysis, but not to find the offending motorist in violation of the law or impose consequences.<sup>11</sup> In 2000, a Florida study by the Center for Urban Transportation Research found that there were 10,719 reported instances of motorists illegally passing school buses on the day of the survey.<sup>12</sup> There were 14,108 public school buses in daily service at that time.<sup>13</sup>

### **Driver Improvement Courses**

Section 322.0261, F.S., to require the DHSMV to identify any operator who was convicted of or who plead nolo contendere to a first violation of failure to stop for or pass a stopped school bus displaying a stop signal and require that operator, in addition to other applicable penalties, to attend a DHSMV-approved driver improvement course in order to maintain driving privileges. If the operator fails to complete the course within 90 days after receiving notice from the DHSMV, the operator’s driver license is canceled by the DHSMV until the course is successfully completed. In determining whether to approve a driver improvement course, the DHSMV considers course content designed to promote safety, driver awareness, crash avoidance techniques, and other factors or criteria to improve driver performance from a safety viewpoint.

### **Trauma Centers**

A verified trauma center (center) is a hospital with an established trauma program which includes health care practitioners who specialize in the treatment of emergent conditions and facilities appropriate to treat those patients.<sup>14</sup> Part II of Chapter 395, F.S., provides for a tiered system of center verification within the 19 trauma service areas established in s. 395.402, F.S. The Florida Department of Health (DOH) selects hospitals for center designation through an application process. Standards for designation are based on national guidelines established by the American College of Surgeons.<sup>15</sup> Standards for designation as a pediatric center are developed in conjunction with Children's Medical Services.<sup>16</sup> Florida’s centers treat over 40,000 patients annually.<sup>17</sup>

There are three types of centers:

- Level I centers which have formal trauma care research and education programs; provide support to Level II and pediatric centers and general hospitals; and participate in an inclusive system of trauma care.<sup>18</sup>

<sup>11</sup> Florida Department of Education, *2011 Agency Legislative Bill Analysis: SB 2036, 3-29-11* (on file with the Transportation Committee).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Florida Department of Health, *The Costs of Trauma Center Readiness, July 17, 2002* (on file with the Transportation Committee).

<sup>15</sup> s. 395.401(2), F.S. Section 395.4025, F.S., delineates the DOH verified trauma center designation process. Detailed DOH standards for designation are found in *Trauma Center Standards, Department of Health, Pamphlet 150-9, January 2008*, see <http://www.doh.state.fl.us/DEMO/Trauma/PDFs/TraumaCntrStandards-DOHPamphlet150-9Jan2008.pdf> (last visited April 3, 2011).

<sup>16</sup> *Id.*

<sup>17</sup> Florida Department of Health, Division of Emergency Medical Operations, Office of Trauma, see <http://www.doh.state.fl.us/DEMO/Trauma/index.html> (last visited April 3, 2011).

<sup>18</sup> s. 395.4001(6), F.S.

- Level II centers which serve as a resource for general hospitals and participate in an inclusive system of trauma care.<sup>19</sup>
- Pediatric centers must be in substantial compliance with DOH rules relating to pediatric trauma center operation.<sup>20</sup>

There are a total of 21 verified centers in Florida: 7 Level I; 8 Level II, 4 Level II and Pediatric, and 2 Pediatric only centers.<sup>21</sup> A center may have more than one designation, for example, St. Mary's Medical Center in West Palm Beach carries both a Level II and a Pediatric center designation. Additionally, one provisional center exists in Ft. Pierce, Florida.

Centers are partially funded by traffic infraction fines deposited into the Administrative Trust Fund (Trust Fund) within the DOH. Currently, as provided in s. 318.18(5)(c), F.S., the Department of Revenue (DOR) deposits \$65 of the \$165 or \$265 traffic citation fine for failure to stop for a school bus or passing a school bus, respectively, assessed by law enforcement officers, into the DOH Emergency Medical Services Trust Fund for distribution to trauma centers. DOH distributes these funds on a quarterly basis to Centers based on a distribution methodology as provided in s. 395.4036, F.S. The distribution methodology requires:

- Thirty percent to Level II trauma centers operated by a public hospital governed by an elected board of directors as of December 31, 2008.<sup>22</sup>
- Thirty-five percent to Centers based on a Center's trauma caseload for the most recent calendar year for which data is available. The determination of caseload volume for distribution of funds is based on DOH's Trauma Registry data.<sup>23</sup>
- Thirty-five percent to Centers based on the severity of a Center's caseload. Severity determination is made by DOH according to the International Classification Injury Severity Scores.<sup>24</sup>

Verified trauma centers are either subject to audit under s. 215.97, F.S., the Florida Single Audit Act, or, if not subject to audit requirements, must annually attest to DOH that proceeds from distributions under s. 395.4036, F.S., were used in compliance with that section.<sup>25</sup> Currently, traffic fine revenues do not directly fund any other type of health care facility or entity.

### III. Effect of Proposed Changes:

#### School Bus Safety Program

Generally, this bill creates the "School Bus Safety Program" and provides a definition of the term "school bus traffic infraction detector". The bill s. 316.0084, F.S., authorizing the use of

<sup>19</sup> s. 395.4001(7), F.S.

<sup>20</sup> s. 395.4001(9), F.S.

<sup>21</sup> Florida Department of Health, Division of Emergency Medical Operations, Office of Trauma, see <http://www.doh.state.fl.us/DEMO/Trauma/PDFs/TextEquivforTraumaCentersMap.doc> (last visited April 3, 2011).

<sup>22</sup> s. 395.4036(1)(b)1., F.S.

<sup>23</sup> s. 395.4036(1)(b)2., F.S.

<sup>24</sup> s. 395.4036(1)(b)3., F.S. The International Classification Injury Severity Score (ICISS) is a mathematical ratio used to predict and score patient survival from severe injuries. Rule 64J-2.019, F.A.C., provides for classifications of trauma patients based on the ICISS scoring system.

<sup>25</sup> s. 395.4036(3), F.S.

cameras to enforce the requirements of s. 316.172(1)(a) and s. 316.172(1)(b), F.S., for failing to stop for a school bus when so directed.

**Section 1.** Amends s. 316.003, F.S., to provide a definition of the term “school bus traffic infraction detector”. Specifically, a “school bus traffic infraction detector” is defined as a vehicle sensor installed to work in conjunction with a school bus and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of a motor vehicle at the time the vehicle passes a school bus in violation of s. 316.172(1)(a) or s. 316.172(1)(b), F.S. Any notification under s. 316.0084(1)(b), F.S., or traffic citation issued by the use of a school bus traffic infraction detector must include a photograph, video feed, or other recorded image showing both the license tag of the offending vehicle and the school bus stop signal being violated.

**Section 2.** Amends s. 316.008, F.S., to authorize a Florida school district to deploy school bus infraction detectors on its school buses for enforcing s. 316.172(1)(a), or s. 316.172(1)(b), F.S., when a driver fails to stop upon approaching any school bus which displays a stop signal. A school district deploying school bus traffic infraction detectors will coordinate the issuing of traffic citations with the Florida Highway Patrol, local sheriff’s office, local police department, local school board, if applicable, or any other entity having the authority and jurisdiction to enforce the traffic laws of this state and within the particular school district as provided in ss. 316.006 and 316.640, F.S.

**Section 3.** Creates s. 316.0084, F.S., to provide:

#### **Notifications and Citations**

If a traffic infraction detector identifies a person violating ss. 316.172(1)(a) or 316.172(1)(b), F.S., the visual information is captured and reviewed by a traffic infraction enforcement officer. The bill provides that a notification must be issued to the registered owner of the vehicle by first class mail within 10 days of the alleged infraction. The notice must be accompanied by a photograph or other recorded image of the violation, and must include a statement of the vehicle owner’s right to review images or video of the violation, and the time, place, and Internet location where the evidence may be reviewed.

If the registered owner of the vehicle does not submit payment within 30 days of receipt of the notification described above, the traffic infraction enforcement officer must issue a traffic citation to the owner. A citation must be mailed by certified mail, and must be issued no later than 45 days after the violation. The citation must also include the photograph and statements described above regarding review of the photographic or video evidence. The report of an officer and images provided by a traffic infraction detector are admissible in court and provide a rebuttable presumption the vehicle was used in a violation.

#### **Defenses**

The registered owner of the motor vehicle is responsible for payment of the fine unless the owner can establish that the vehicle:

- Passed the bus at the direction of a law enforcement officer;
- Was, at the time of the violation, in the care, custody, or control of another person; or

- Received a Uniform Traffic Citation (UTC) for the alleged violation issued by a law enforcement officer.

To establish any of these defenses, the owner of the vehicle must furnish an affidavit to the appropriate governmental entity that provides detailed information supporting an exemption as provided above, including relevant documents such as a police report (if the car had been reported stolen) or a copy of the UTC, if issued. If the owner submits an affidavit that another driver was behind the wheel, the affidavit must contain the name, address, date of birth, and if known, the driver's license number, of the driver. A traffic citation may be issued to this person, and the affidavit from the registered owner may be used as evidence in a further proceeding regarding that person's alleged violation of ss. 316.172(1)(a) or 316.172(1)(b), F.S. Submission of a false affidavit is a second degree misdemeanor.

If a vehicle is leased, the owner of the leased vehicle is not responsible for paying the citation, nor required to submit an affidavit, if the motor vehicle is registered in the name of the lessee.

### **Fines**

The bill increases the penalty for a violation of s. 316.172(1)(a), F.S., when a driver has failed to stop for a school bus when so directed, from \$100 to \$200. The fine for a violation of s. 316.172(1)(b), F.S., remains at \$200. The additional \$65 civil penalty still applies for either violation. Therefore, violations of both s. 316.172(1)(a), or s. 316.172(1)(b), F.S., results in a penalty of \$265, regardless of whether the citation is issued by a law enforcement officer or a traffic infraction enforcement officer, through the use of a school bus traffic infraction detector.

For violations detected through the use of a traffic infraction detector, the total penalty is \$265, if the penalty is paid within 30 days of notification. However, if the penalty is not paid within 30 days of notification and a traffic citation is issued, the total penalty is \$265, plus court costs and fees of up to \$98, depending on the county where the offense occurs.

If the notice or citation is issued by a traffic infraction enforcement officer, through the use of a school bus traffic infraction detector, the \$265 penalty is distributed as follows:

- \$170 to the school district in which the violation occurred,
- \$65 to the Department of Health's Emergency Medical Services Trust Fund,
- \$15 to DHSMV, and
- \$15 to the county or municipality issuing the notice or citation or DHSMV if the department issued the notice or citation.

### **Oversight and Accountability**

Beginning in 2013, each school district that operates a traffic infraction detector is required to submit an annual report to DHSMV containing the following:

- the results of using the school bus traffic infraction detector;
- the procedures for enforcement; and
- statistical data and information required by DHSMV.

By December 31, 2013, and annually thereafter, DHSMV must submit a summary report to the Governor and Legislature which must contain:

- a review of the information, described above, received from the counties and municipalities;
- a description of the enhancement of the traffic safety and enforcement programs; and
- recommendations, including any necessary legislation.

**Section 4.** Creates s. 316.07457, F.S., to provide any school bus traffic infraction detector deployed by a school district must meet requirements established by DHSMV and must be tested at regular intervals according to specifications prescribed by DHSMV. The DHSMV must establish the specifications by December 31, 2011.

**Section 5.** Creates s. 316.0777, F.S., to allow the placement and installation of school bus traffic infraction detectors on school buses when permitted by and under the specifications of DHSMV.

**Section 6.** Amends s. 316.640, F.S., to authorize traffic infraction enforcement officers to issue uniform traffic citations for violations of ss. 316.172(1)(a) and 316.172(1)(b), F.S., when a driver fails to stop upon approaching any school bus which displays a stop signal and when identified by school bus traffic infraction detectors.

**Section 7.** Amends s. 316.650, F.S., specify that procedures relating to issuance of traffic citations under s. 316.0084, F.S., shall be identical to existing procedures for other specified sections of law. Specifically, this section requires a traffic infraction enforcement officer to provide by electronic transmission a replica of the citation data (when issued under s. 316.0084, F.S.) to the court having jurisdiction over the alleged offense or its traffic violations bureau within 5 business days after the issuance date of the citation to the violator.

**Section 8.** Amends s. 318.14, F.S., to provide an exception from provisions requiring a person cited for an infraction for failing to stop upon approaching any school bus which displays a stop signal (when issued under s. 316.084, F.S., which should be corrected to reference s. 316.0084, F.S.) to sign and accept a citation indicating a promise to appear.

**Section 9.** Amends s. 318.18(5), F.S., to increase the penalty for a violation of s. 316.172(1)(a), F.S., when a driver has failed to stop for a school bus when so directed, from \$100 to \$200. The fine for a violation of s. 316.172(1)(b), F.S., remains at \$200. The additional \$65 civil penalty still applies for either violation. Therefore, violations of both s. 316.172(1)(a), or s. 316.172(1)(b), F.S., results in a penalty of \$265.

For violations detected through the use of a traffic infraction detector, the total penalty is \$265, if the penalty is paid within 30 days of notification. However, if the penalty is not paid within 30 days of notification and a traffic citation is issued, the total penalty is \$265, plus court costs and fees of up to \$98, depending on the county where the offense occurs.

This section changes the distribution of penalties if the citation is issued by a law enforcement officer for violations of ss. 316.172(1)(a) or 316.172(1)(b), F.S.

Regardless of whether the citation is issued by a law enforcement officer or a traffic infraction enforcement officer, through the use of a school bus traffic infraction detector, the \$265 penalty is distributed as follows:

- \$170 to the school district in which the violation occurred,
- \$65 to the Department of Health's Emergency Medical Services Trust Fund,
- \$15 to DHSMV, and
- \$15 to the county or municipality issuing the notice or citation or DHSMV if the department issued the notice or citation.

The bill provides that if a person presents documentation from the appropriate governmental entity that the citation was issued in error, the clerk of course may dismiss the case, and may not charge for such service.

**Section 10.** Creates s. 321.51, F.S., to authorize DHSMV to use school bus traffic infraction detectors on any state road under the original jurisdiction of FDOT, when permitted by FDOT.

**Section 11.** Amends s. 322.27(3), F.S., to provide that violations of ss. 316.172(1)(a) or s. 316.172(1)(b), F.S., when a driver has failed to stop upon approaching a school bus displaying a stop signal, which are enforced by traffic infraction enforcement officers may not result in points assessed against the operator's driver's license, and may not be used for the purpose of setting motor vehicle insurance rates.

**Section 12.** Creates an undesignated section providing a severability clause.

**Section 13.** Provides an effective date of July 1, 2011.

#### **Other Potential Implications**

The purpose for, and meaning of Section 10 of the bill is unclear. As written, Section 10 grants the Florida Department of Transportation (FDOT) the power to allow (and by inference, to disallow) the use of images from school bus infraction detectors by DHSMV to enforce s. 316.172(1)(a) or s. 316.172(1)(b), F.S., on facilities under the jurisdiction of FDOT, i.e, state roads. It is not clear whether such permission is necessary for other entities (*e.g.*, local sheriff's office, local police department, or local school board) to enforce these statutes or whether such permission is only necessary for enforcement activities that take place on state roads.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill increases the fine from \$100 to \$200 for a violation of s. 316.172(1)(a), F.S.

According to DHSMV, in 2009, there were 3,533 citations for failure to stop for a school bus (s. 316.172(1)(a), F.S.) and 295 citations for passing a stopped school bus (s. 316.172(1)(b), F.S.). These numbers are based on law enforcement observations. As the use of school bus traffic infraction detection devices and the penalties for violations are made known, the frequency of these violations may decrease, improving the safety of school bus passengers.

To the extent school districts choose to permit the use of traffic infraction detectors there may be a fiscal impact to the private sector. Traffic infraction detectors will increase the scope of a local government's enforcement of failure to stop for a school bus and passing a stopped school bus violations; therefore, increasing the possibility of a motor vehicle owner receiving a citation for a these violations. The fine for the violation is \$265.

This bill may present an opportunity for private industry vendors to provide school bus traffic infraction detection device manufacturing, installation, support and maintenance.

**C. Government Sector Impact:**

Section 318.18(5), F.S., changes the distribution of penalties if the citation is issued by a law enforcement officer for violations of ss. 316.172(1)(a) or 316.172(1)(b), F.S.

Regardless of whether the citation is issued by a law enforcement officer or a traffic infraction enforcement officer through the use of a school bus traffic infraction detector, the \$265 penalty is distributed as follows:

- \$170 to the school district in which the violation occurred,
- \$65 to the Department of Health's Emergency Medical Services Trust Fund,
- \$15 to DHSMV, and
- \$15 to the county or municipality issuing the notice or citation or DHSMV if the department issued the notice or citation.

This bill may generate additional revenues for local and state governments as a result of Florida school districts using school bus traffic infraction detection devices on school buses and the increased penalty for failing to stop for a school bus or passing a stopped school bus.

The bill requires DHSMV to adopt rules implementing specifications for installation, placement, and testing of school bus traffic infraction detectors.

**VI. Technical Deficiencies:**

According to DOE, all aspects of current Florida school bus equipment specifications are adopted by the State Board of Education (SBE) under the authority of s. 1006.25, F.S., and Rule 6A-3.0291, FAC.<sup>26</sup> “The bill sponsor may wish to consider delegating the authority for adopting specifications relating to installation, placement, functioning, inspection, and testing of the school bus traffic crash infraction detectors to the SBE rather than to DHSMV.”<sup>27</sup>

Section 8 of the bill should reference s. 316.0084, F.S., instead of s. 316.084, F.S.

Section. 316.0084(1)(b)2., F.S., requires penalties assessed and collected by DSHMV, a county, or a municipality, less the amount to be retained by the county or municipality, to be remitted to the Department of Revenue (DOR) weekly by electronic funds transfer. However, s. 316.0084(1)(b)3., F.S., also provides that specified portions of the funds are to be remitted to the school district and the DHSMV. According to DOR, “it should be clarified that the funds are remitted to the [DOR] for payment to the school district and for deposit into a designated fund of the DHSMV.”<sup>28</sup>

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>26</sup> Florida Department of Education, *2011 Agency Legislative Bill Analysis: SB 2036, 3-29-11* (on file with the Transportation Committee).

<sup>27</sup> *Id.*

<sup>28</sup> Florida Department of Revenue, *2011 Bill Analysis: SB 2036* (on file with the Transportation Committee).

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Transportation Committee

BILL: CS/SB 1124

INTRODUCER: Education Pre-K Committee and Senator Montford

SUBJECT: Public School Buses

DATE: March 23, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	<b>Fav/CS</b>
2.	Sookhoo	Spalla	TC	<b>Pre-meeting</b>
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

Under the bill, commercial advertisements would be permitted to be placed on the exterior of a school bus, according to district school board policies that delineate the content, placement, number, and cost of advertisements. If a bus does not comply with these requirements, it must be withdrawn from use until it does so.

Under the bill, 50 percent of the advertising revenue would be allocated to the school district's transportation program, 40 percent to other programs specified by the district, and 10 percent to the district's driver's education program. Of the allocation to the driver's education program, 30 percent would be directed to behind-the-wheel instruction.

This bill substantially amends s. 1006.25 of the Florida Statutes.

**II. Present Situation:**

Exterior advertising on public school buses is currently prohibited in the Florida School Bus Specifications, adopted by reference in administrative rule under the authority in s. 1006.25,

F.S.<sup>1</sup> According to the Department of Education (DOE), this specification requirement is based on the 2005 National School Transportation Specifications and Procedures to provide national uniformity of the familiar exterior yellow and black coloration of school buses and ensure safety.<sup>2</sup> The specifications limit the coloration, lettering, identification, and markings that may be installed on public school bus exteriors, including the National School Bus Yellow paint, black trim, and white roof; retroreflective conspicuity striping; belt line lettering identifying the school district; and bus numbers.

States that permit this type of advertising include New Mexico<sup>3</sup> and Arizona.<sup>4</sup> These states permit local officials to set policies and prohibit or limit various types of advertisements, such as those related to alcohol or tobacco products. Arizona law specifies the permissible location of the ads (e.g., in areas other than those that will impede the safe operation of the school bus).<sup>5</sup>

### III. Effect of Proposed Changes:

Under the bill, commercial advertisements would be permitted to be placed on the exterior of a school bus, according to district school board policies that delineate the content, placement, number, size, and cost of advertisements. If a bus does not comply with these requirements, it must be withdrawn from use until it does so.

School board policy would delineate the types of objectionable advertising, including those that are discriminatory in nature, contain material that is not child- and community-sensitive, or relate to antisocial behavior. These policies would be incorporated into contracts with businesses. In making its determination as to what constitutes objectionable advertising, a school board would have to balance this with an advertiser's exercise of commercial speech.

Proponents note that school bus advertising provides a necessary source of revenue in challenging economic times. Opponents assert that advertising will compromise the distinctive characteristics of school buses, namely the uniform color of buses, which is associated with the presence of children. They further express concern that a motorist may be distracted by advertising and will result in driving hazards. In response, proponents cite the absence of empirical evidence that advertising distracts motorists. Opponents cite studies that confirm the effects of distraction on motor vehicle crashes.<sup>6</sup>

Under the bill, 50 percent of the advertising revenue would be allocated to the school district's transportation program, 40 percent to other programs specified by the district, and 10 percent to

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<sup>1</sup> Rule 6A-3.0291, F.A.C. According to the Department of Education (DOE), the 2010 specifications have not yet been adopted by the State Board of Education; however, the 2010 specification in this area have not changed. DOE draft bill analysis for HB 109, March 16, 2011.

<sup>2</sup> E-mail, DOE, January 5, 2011, on file with the committee. See [www.NCSTOnline.org](http://www.NCSTOnline.org).

<sup>3</sup> NMSA §22-28-1.

<sup>4</sup> A.R.S. §15-342.

<sup>5</sup> Based on responses to a January 2010 survey of all states, the DOE reported that 23 states (74 percent of the 31 respondents) prohibited exterior advertising on school buses: one state allowed it without restrictions; and, seven states (23 percent) allowed it with some restrictions. The DOE notes that this information includes the 2011 New Jersey legislation, which allows exterior school bus advertising, subject to specified limitations. DOE draft bill analysis, March 16, 2011.

<sup>6</sup> *Statistics and Facts about Distracted Driving*, U.S. Department of Transportation. See <http://www.distraction.gov/stats-and-facts/>.

the district's driver's education program. Of the allocation to the driver's education program, 30 percent would be directed to behind-the-wheel instruction.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

In general, that a property is government-owned does not automatically open the property up to the public.<sup>7</sup> Rather, the nature of the forum dictates the level of government control over that property.<sup>8</sup> Courts distinguish among traditional public forums; designated or limited forums; and nonpublic forums.<sup>9</sup> A traditional public forum is a physical space such as a public street or park that has traditionally been held in trust for public use, and is a place of open discourse and assembly.<sup>10</sup> A designated public forum refers to public property the government has provided specifically for the purpose of expressive activity, such as university meeting facilities, school board meetings, and municipal theaters.<sup>11</sup> Courts have consistently applied strict scrutiny, or the highest level of review, to content-based government restrictions on speech that takes place in a traditional public forum.<sup>12</sup> To survive strict scrutiny, the state is required to show a governmental regulation is narrowly drawn to accomplish a compelling governmental interest, the regulation is reasonable, and the viewpoint neutral.<sup>13</sup> If the regulation is content-neutral, and the government imposes restrictions in a time, place, and manner approach, mid-level scrutiny applies.<sup>14</sup> If so, the state is required to demonstrate a significant, rather than compelling state interest.<sup>15</sup> These same levels of scrutiny apply to a designated public forum, provided the character of the forum is maintained.<sup>16</sup> Public property that is neither a traditional public forum, nor a limited purpose forum, is designated as a nonpublic forum, and subject to low-level scrutiny.<sup>17</sup> Here, the state only needs to show the

<sup>7</sup> *Uptown Pawn & Jewelry, Inc.*, 337 F.3d 1275, 1278 (11<sup>th</sup> Cir. 2003).

<sup>8</sup> *Id.*

<sup>9</sup> Michael A. Scherago, *Closing the Door on the Public Forum*, 26 LYLALR 241, 244-245 (Nov. 1992).

<sup>10</sup> *Id.* at 244.

<sup>11</sup> *Id.* at 245.

<sup>12</sup> See *Ledford v. State*, 652 So.2d 1254 (2<sup>nd</sup> DCA 1995).

<sup>13</sup> *Id.* at 1256.

<sup>14</sup> Scherago, *supra* note 6, at 245.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 246.

restrictions are reasonable and not viewpoint discriminatory.<sup>18</sup> Public buses, subways, and streetcars have been classified as nonpublic fora.<sup>19</sup> Courts have been mixed, however, regarding whether the advertising space on buses constitutes public fora.<sup>20</sup>

For example, in 1974, the U.S. Supreme Court held that interior advertising space on a city transit system does not constitute a public forum.<sup>21</sup> Here, the city refused to allow advertising that was political in nature, basing its decision on the appearance of support of one political candidate over another. In upholding the city's action, the court distinguished between speech conveyed in a traditional public forum, where passersby are free to come and go, and speech that is forced upon a captive audience.<sup>22</sup> In a concurring opinion, Justice Douglas stated more specifically, "...if we are to turn a bus or streetcar into either a newspaper or a park, we take great liberties with people who because of necessity become commuters and at the same time captive viewers or listeners."<sup>23</sup> The decision to designate a public bus as a nonpublic forum has subsequently been questioned.<sup>24</sup>

In refusing to rule on whether the interiors of subways and trolley cars constitute a public forum, a 1994 court cited inconsistency and lack of clarity in its application to those places. Instead, the court proceeded directly to the issue of whether the Massachusetts Bay Transportation Authority's restriction was content neutral.<sup>25</sup> The First Circuit U.S. Court of Appeals affirmed the District Court's opinion, which struck down the Massachusetts Bay Transportation Authority's ("Authority") policy on restricting advertising in subways and trolley cars.<sup>26</sup> Here, where the Authority prohibited ads which used sexual innuendo to educate about Acquired Immune Deficiency Syndrome (AIDS) and condom use, but permitted movie ads with similar levels of sexual content, the court held that the Authority committed viewpoint discrimination.<sup>27</sup>

While the court has recognized it is possible for a transit authority to define as a legitimate policy the rejection of ads harmful to children, the inquiry does not end upon a mere assertion of child protection.<sup>28</sup> Where a transit authority prohibited marijuana decriminalization ads but had previously accepted ads promoting the use of alcohol, the court held the authority had not adequately refuted viewpoint discrimination. Further, the

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<sup>18</sup> *Id.*

<sup>19</sup> Cynthia R. Mabry, *Brother Can You Spare Some Change?—And Your Privacy Too?: Avoiding a Fatal Collision Between Public Interests and Beggars' First Amendment Rights*, 28 USFLR 309, 329 (Winter, 1994).

<sup>20</sup> *See, i.e., New York Magazine v. Metropolitan Transportation Authority*, 136 F.3d 123 (2d Cir. 1998) in which the court held that advertising space on buses were designated public forum; *Ridley v. Massachusetts Bay Transportation Authority*, 390 F.3d 65 (1<sup>st</sup> Cir. 2004) in which the court finds the opposite.

<sup>21</sup> *Lehman v. City of Shaker Heights*, 94 S.Ct. 2714 (S.Ct. 1974).

<sup>22</sup> *Id.* at 2715.

<sup>23</sup> *Id.* at 2719.

<sup>24</sup> Scherago, *supra* note 6, at 261.

<sup>25</sup> *Aids Action Committee of Massachusetts, Inc., v. Massachusetts Bay Transportation Authority*, 42 F.3d 1, 10 (1<sup>st</sup> Cir. 1994)

<sup>26</sup> *Id.* at 3.

<sup>27</sup> *Id.* at 12.

<sup>28</sup> *Ridley v. Massachusetts Bay Transportation Authority*, 390 F.3d 65, 85-86 (1<sup>st</sup> Cir. 2004).

court held the authority failed to show a sufficient link between the drug ads and a negative impact on juveniles.<sup>29</sup>

The bill, as written, does not provide guidelines on sponsor language, and therefore, is not likely itself to be the subject to a court challenge. A greater potential for challenge exists when a school board adopts policies for acceptance/rejection of sponsors. It is unclear whether a court would interpret the listing of a sponsor's name and logo on the outside of school buses as forcing ideas on a captive audience, in this case the students riding on the bus, in the same vein as the impact of political advertising inside the bus or subway on passengers, as was the case in *Lehman*. Provided that a court would likely designate a school bus as a nonpublic forum, it appears that lower level scrutiny would apply to a review of restrictions on speech, such that the state would only be required to show a reasonable relationship between the restriction and the state's purpose. In this case, the state would probably assert the protection of children as the state interest. Case law, however, still requires restrictions on speech to be viewpoint neutral. This is particularly notable if a district school board rejects certain sponsors and permits others who are similarly situated.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

The revenue that would accrue to businesses under contract with school districts for advertisements is indeterminate.

### C. Government Sector Impact:

Businesses under contract with school districts must reimburse school districts for all costs associated with advertising, such as retrofitting buses and related maintenance. The amount of revenue that will accrue to school districts is indeterminate.

## VI. Technical Deficiencies:

Lines 80-82 states "...the 10 percent allocated for behind-the-wheel instruction may be allocated for other programs as determined by the school district"; however, the intent seems to indicate a rephrasing to "...the 10 percent allocated for driver education programs may be allocated for other programs as determined by the school district". This change is necessary because 10 percent of funding from the revenue generated from advertising is allocated to driver education programs and not behind-the-wheel instruction.

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<sup>29</sup> *Id.* at 88-89.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Education Pre-K – 12 on March 23, 2011:**

The committee substitute:

- Provides that advertisements may not exceed a specific size;
- Prohibits political advertising;
- Deletes the requirement for the Commissioner of Education to hold harmless and indemnify school districts from liability arising from school bus advertisements;
- Revises the manner in which revenue generated from advertising is allocated to programs other than school district transportation; and
- Corrects a technical reference to the required lettering on school buses.

- B. **Amendments:**

None.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Transportation Committee

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BILL: SB 904

INTRODUCER: Senator Dean

SUBJECT: Driver's Licenses and Identification Cards

DATE: April 1, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	<b>Favorable</b>
2.	Sookhoo	Spalla	TR	<b>Pre-meeting</b>
3.			BC	
4.				
5.				
6.				

**I. Summary:**

This bill creates a new \$1 check-off on driver's license applications for the Disabled American Veterans. Specifically, the bill amends s. 322.08, F.S., to require driver's license applications and renewals to include a \$1 voluntary contribution to Disabled American Veterans, Department of Florida, a non-profit 501(c)(3) organization.

This bill substantially amends s. 322.08 of the Florida Statutes.

This bill has an effective date of July 1, 2011.

**II. Present Situation:**

**Driver's License Check-offs**

Section 322.081, F.S., provides the procedures that an organization must follow prior to seeking legislative authorization to request the creation of a new voluntary trust fund fee and establish a corresponding voluntary check-off on a driver's license application. The check-off allows a person applying for or renewing a Florida driver's license to voluntarily contribute to one or more of the authorized voluntary trust funds during the driver's license transaction. Before the organization is eligible, it must submit the following to the Florida Department of Highway Safety and Motor Vehicles (DHSMV) at least 90 days before the convening of the regular session of the Legislature:

- A request for the particular voluntary contribution being sought, describing it in general terms.

- An application fee of up to \$10,000 to defray the DHSMV's costs for reviewing the application and developing the check-off, if authorized. State funds may not be used to pay the application fee.
- A short- and long-term marketing strategy and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the voluntary contribution.

Once a contribution is enacted, the DHSMV must discontinue the check-off if less than \$25,000 has been contributed by the end of the fifth year, or if less than \$25,000 is contributed during any subsequent 5-year period.<sup>1</sup>

Prior to the 2010 legislative session, s. 322.08, F.S., authorized seven voluntary contributions while s. 322.18(19), F.S., authorized an eighth. In 2010, the Florida Legislature enacted three bills that addressed driver's license contributions:

- 2010, HB 971 (ch. 2010-223, Laws of Florida) added two additional check-offs for the League Against Cancer and the State Homes for Veterans Trust Fund administered by the Florida Department of Veterans Affairs.
- 2010, HB 399 (ch. 2010-86, Laws of Florida) added three additional check-offs for Senior Vision Services, The Arc of Florida, and Ronald McDonald House Charities of Tampa Bay.
- 2010, HB 263 (ch. 2010-82, Laws of Florida) added an additional check-off for Lauren's Kids, Inc.<sup>2</sup>

In addition to creating the League Against Cancer and State Homes for Veterans check-offs, ch. 2010-223, Laws of Florida, established a moratorium on new voluntary check-offs. DHSMV "may not establish any new voluntary contributions on the motor vehicle registration application form under s. 320.023, Florida Statutes, or the driver's license application form under s. 322.081, Florida Statutes, between July 1, 2010, and July 1, 2013."

An exemption to the moratorium in ch. 2010-223, Laws of Florida, allows those charities that were in the process of complying with s. 322.081, F.S., in 2010 to continue to seek a check-off. DHSMV has identified five charitable organizations that fall within the exemption from the moratorium. Disabled American Veterans, Department of Florida is one of these charities.<sup>3</sup>

### **Disabled American Veterans, Department of Florida**

The Disabled American Veterans (DAV) was founded in 1920 and is dedicated to building better lives for America's disabled veterans and their families. The DAV provides assistance to disabled veterans through its 72 offices in the United States and Puerto Rico with over 270 National Service Officers. The DAV, Department of Florida's headquarters is located in Micanopy, Florida, and provides a broad range of services to disabled veterans including

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<sup>1</sup> Section 322.081(4)(a), F.S.

<sup>2</sup> In addition to creating the check-off for Lauren's Kids, Inc., ch. 2010-82, Laws of Florida, streamlined the application process by eliminating s. 322.18(19), F.S., and clarifying that the check-offs required in s. 322.08(7), F.S., must appear on all license applications, including applications for renewal or replacement. This change reflects the fact that DHSMV uses a single application form for all such purposes.

<sup>3</sup> Letter from DHSMV Executive Director Julie L. Jones to the Florida House of Representatives, Transportation and Highway Safety Subcommittee, January 14, 2011.

providing consultation on U.S. Department of Veteran Affairs benefits, compensation, and healthcare as well as assisting veterans in assembling evidence to support benefit claims. DAV's operations are solely supported from the collection of donations and dues.<sup>4</sup>

### III. Effect of Proposed Changes:

This bill amends s. 320.08, F.S., to require driver's license applications and renewals to include a \$1 check-off to the Disabled American Veterans, Department of Florida, a non-profit 501(c)(3) organization.

The DHSMV has provided notice that Disabled American Veterans, Department of Florida, has complied with s. 322.081, F.S., regarding requests to establish a voluntary check-off, by submitting its letter of request, \$10,000 application fee, and approved short- and long-term marketing plans.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

Motorists who decide to donate would pay an additional dollar to acquire or renew a driver's license.

#### C. Government Sector Impact:

The bill will require programming modifications to DHSMV's Driver License and Motor Vehicle Information Systems, the cost of which will be paid from the \$10,000 application fee submitted by the Disabled American Veterans, Department of Florida.

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<sup>4</sup>Information summarized from: Disabled American Veterans, Department of Florida Website. *About Us*. Available at: [http://www.davmembersportal.org/fl/Web\\_Pages/about\\_us.aspx](http://www.davmembersportal.org/fl/Web_Pages/about_us.aspx) (Site last accessed March 22, 2011.)

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Transportation Committee

BILL: CS/SB 1824

INTRODUCER: Regulated Industries Committee and Senator Hays

SUBJECT: Regulated Professions and Occupations

DATE: April 1, 2011 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Fav/CS
2.	Eichin	Spalla	TC	Pre-meeting
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The Committee Substitute (CS) amends provisions related to the regulation of professions under the Department of Business and Professional Regulation (department). The CS authorizes the Department of Highway Safety and Motor Vehicles to release photographs to the department to identify suspects involved in unlicensed activity investigations. The CS provides that the department can waive renewal fees on a case-by-case basis for financial hardship or an error caused by the department. The CS provides that licensees who are required to obtain continuing education prior to license renewal need only complete one licensure cycle of continuing education to reactivate an inactive license.

The CS decriminalizes violations of board rules for cosmetology related professions and real estate professions.

The CS amends appraisal regulations and deletes references to Uniform Standards of Professional Appraisal Practice. Instead, the CS provides that the professional standards will be adopted by board rule.

The CS provides that matters related to the nutritional content and marketing of foods offered in public food service establishments are preempted to the state. In addition, the CS provides that mandatory completion of a remedial educational program administered by a food safety training program provider may be imposed by the Division of Hotels and Restaurants on any public lodging establishment or public food service establishment that has operated in violation of ch. 509, F.S., or a rule of the division.

In addition, the CS delays the implementation of the regulation of appraisal management companies, from July 1, 2011 to July 1, 2014.

This CS substantially amends the following sections of the Florida Statutes: 322.142, 455.213, 455.271, 475.42, 477.0212, 477.0265, 481.217, 481.315, 489.116, 489.519, 475.611, 475.656, 475.624, 475.628, 509.032, and 509.261.

## **II. Present Situation:**

### **Department of Business and Professional Regulation**

The Department of Business and Professional Regulation (department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.<sup>1</sup> The department is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following eleven divisions within the department:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
- Division of Real Estate.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.

### **Professional Boards**

Section 20.165(4)(a), F.S., establishes the following boards and professions within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.

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<sup>1</sup> Chapter 93-220, L.O.F.

- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

The Florida State Boxing Commission,<sup>2</sup> the Pilot Rate Review Board,<sup>3</sup> and the Regulatory Council of Community Managers are also housed within the department. The department also has regulatory oversight responsibilities over the following professions:

- Child labor under part I of ch. 450, F.S.
- Farm labor contractors under part III of ch. 450, F.S.
- Talent agencies under part VII of ch. 468.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

## **Fees**

Section 455.213, F.S., establishes general licensing provisions for the department, including the authority to charge licensing fees.

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<sup>2</sup>Section 548.003, F.S.

<sup>3</sup> *Id.*

### **Continuing Education**

Section 455.271(4), F.S., provides that an inactive licensee may change his or her status to active provided the licensee meets all requirements for active status, pays the appropriate fees, and meets all continuing education requirements.

### ***Cosmetology***

Section 477.019(7)(a), F.S., requires the Board of Cosmetology to prescribe by rule continuing education requirements, not to exceed 16 hours biennially,<sup>4</sup> as a condition for renewal of a license or registration as a specialist. Section 477.0212, F.S., provides that a cosmetologist's license that has become inactive may be reactivated upon application to the department, which would require the inactive licensee to complete 16 hours of continuing education coursework for each cycle he or she was inactive.

### ***Architecture and Interior Design***

Section 481.215, F.S., provides that the continuing education requirements for renewal of architect and interior designer licenses shall be no less than 20 hours per license cycle. Section 481.217(1), F.S., provides that the continuing education requirement for reactivating an architect's license may not exceed 12 hours for each year the license was inactive. The statute provides that the minimum continuing education requirement for reactivating an interior designer's license shall be the number of hours required for the most recent license cycle plus half of the requirements for each year or part in which the license was inactive.

### ***Landscape Architecture***

Section 481.315(1), F.S., provides that continuing education requirements for renewing an inactive landscape architect's license may not exceed 12 hours for each year the license was inactive.

### ***Construction***

Section 489.115, F.S., provides that the continuing education requirement for renewal of a construction contractor's license shall be at least 14 hours per license cycle. Section 489.116(6), F.S., provides that an inactive licensee shall comply with the same continuing education requirements that are imposed on an active licensee.

### ***Electrical or Alarm Contracting***

Section 489.517(3), F.S., provides that the continuing education requirement for renewal of an electrical or alarm contractor's license shall be at least 14 hours per license cycle. Section 489.519(1), F.S., provides that the continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the certificate or registration was inactive.

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<sup>4</sup> Licenses are renewed on a two-year cycle.

### **Criminalization of Rule Violations**

Section 477.0265(1)(c), F.S., provides that it is unlawful for any person licensed or registered under ch. 477, F.S., to engage in willful or repeated violations of ch. 477, F.S., or any rule adopted by the Board of Cosmetology. Section 477.0265(2), F.S., provides that any person who violates any provision of s. 477.0265, F.S., commits a misdemeanor of the second degree.<sup>5</sup>

Section 475.42(1)(e), F.S., makes any violation of a lawful rule of the Florida Real Estate Commission a disciplinary action. Section 475.42(2), F.S., subjects the licensee to criminal sanctions for a rule violation.<sup>6</sup> In addition, s. 475.626(2), F.S., makes it a crime to violate any rule of the Florida Real Estate Appraisal Board. Criminal sanctions may be imposed no matter how minor the rule violation.<sup>7</sup>

### **Appraisal Management Companies**

Chapter 2010-84, L.O.F., created the regulation of a new license type for Appraisal Management Companies. The new regulations are to take effect on July 1, 2011. Since passage of the state legislation, the United State Congress passed H.R. 4173, also known as the Frank-Dodd Wall Street Reform and Consumer Protection Act, which was enacted into law on July 21, 2010.<sup>8</sup> The new federal law requires states to regulate Appraisal Management Companies; however, according to the division, because final regulatory requirements have not been set by rule at this time, there remains uncertainty about how to proceed to ensure consistencies with the requirements of the federal law.

### **Division of Hotels and Restaurants**

The Division of Hotels and Restaurants (division) within the department is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. According to the department, there are over 37,273 licensed public lodging establishments, including hotels, motels, nontransient and transient rooming houses, and resort condominiums and dwellings.<sup>9</sup>

The division is responsible for inspecting public food service establishments to ensure that they meet the requirements of ch. 509, F.S., and division rules.<sup>10</sup> Each public food service establishment must obtain a license and meet the standards set by the division to maintain that license.<sup>11</sup>

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<sup>5</sup> A misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days or a fine not to exceed \$500.

<sup>6</sup> A misdemeanor of the second degree.

<sup>7</sup> *Id.*

<sup>8</sup> Public Law 111-203.

<sup>9</sup> See *Annual Report, Fiscal Year 2009-2010*, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at: [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2009\\_10.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2009_10.pdf) (Last visited March 1, 2011).

<sup>10</sup> Section 509.032, F.S.

<sup>11</sup> Section 509.241, F.S.

Any public food service establishment or public lodging establishment that has operated or is operating in violation of ch. 509, F.S., or the rules of the division, operating without a license, or operating with a suspended or revoked license may be subject by the division to:

- Fines not to exceed \$1,000 per offense;
- Mandatory attendance, at personal expense, at an educational program sponsored by the Hospitality Education Program;<sup>12</sup> and
- The suspension, revocation, or refusal of a license issued pursuant to ch. 509, F.S.

### **Driver's Licenses**

Section 322.142, F.S., provides that reproduction of a driver's license digital image and signature from the file or record of the Department of Highway Safety and Motor Vehicles are exempt from the open records provisions in s. 119.07(1), F.S., except for specified departmental purposes. The Department of Highway Safety and Motor Vehicles may provide copies of licenses to the department pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the department.

The department is currently not authorized to access the digital images for the purpose of identifying subjects who are under investigation for unlicensed activity.

### **III. Effect of Proposed Changes:**

**Section 1.** Provides that the Department of Highway Safety and Motor Vehicles may reproduce color photographic or digital imaged licenses and signatures of licensees to the Department of Business and Professional Regulation for the purpose of identifying subjects who are under investigation for unlicensed activity.

**Section 2.** Creates subsection (12) of s. 455.213, F.S., to provide that the department may grant a fee waiver for a license renewal on a case-by-case basis due to financial hardship or an error caused by the department.

**Section 3.** Amends s. 455.271(10), F.S., to provide that a licensee, except a person licensed under chs. 473 or 475, F.S.,<sup>13</sup> shall only be required to complete one renewal cycle of continuing education to reactive a license.

**Sections 4.** Eliminates rule violations of the Florida Real Estate Commission from the list of violations which may result in criminal penalties.

**Section 5.** Amends s. 477.0212(2), F.S., to provide that the Board of Cosmetology shall require a licensee to complete one renewal cycle of continuing education requirements prior to renewing an inactive license.

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<sup>12</sup> Section 509.302, F.S. This program was not funded in FY 2010-2011.

<sup>13</sup> Chapter 473, F.S., pertains to public accountancy. Chapter 475, F.S., pertains to real estate brokers, sales associates, appraisers, and schools.

**Section 6.** Eliminates rule violations of the Board of Cosmetology from the list of violations which may result in a criminal penalty.

**Sections 7-10.** Provides that architects, interior designers, landscape architects, construction contractors, electrical contractors, and alarm contractor licensees shall only be required to complete one renewal cycle of continuing education to reactive a license.

**Section 11.** Provides that paragraph (v) of subsection (1) of s. 475.611, F.S., as amended by ch. 2010-84, L.O.F., is repealed, effective July 1, 2014.<sup>14</sup> This paragraph provided the definition of “Uniform Standards of Professional Appraisal Practice.”

**Section 12.** Provides that paragraphs (b) and (c) of subsection (1) of s. 475.626, F.S., as amended by ch. 2010-84, L.O.F., are repealed.<sup>15</sup> These paragraphs criminalized rule violations of the Florida Real Estate Appraisal Board.

**Section 13.** Amends subsection (14) of s. 475.624, F.S., as amended by ch. 2010-84, L.O.F., to remove references to the Uniform Standards of Professional Appraisal Practice. Instead, the CS provides that the standards of professional practice will be established by board rule.

**Section 14.** Amends s. 475.628, F.S., to remove references to the Uniform Standards of Professional Appraisal Practice. Instead, the CS provides that the standards of professional practice will be established by board rule.

**Section 15.** Amends s. 509.032, F.S., to provide that matters related to the nutritional content and marketing of foods offered in public food service establishments are preempted to the state.

**Section 16.** Amends s. 509.261, F.S., to provide that a public lodging establishment or public food service establishment that has violated ch. 509, F.S., or a rule of the Division of Hotels and Restaurants, may be subject to mandatory completion of a remedial education program administered by a food safety training program provider whose program has been approved by the division.

**Section 17.** Changes the effective date for the regulation of appraisal management companies to July 1, 2014.

**Section 18.** Provides that except as expressly provided in this act, the act shall take effect July 1, 2011.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>14</sup> The referenced provision is not effective until July 1, 2011.

<sup>15</sup> *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The CS authorizes the department to waive renewal fees on a case-by-case basis.

B. Private Sector Impact:

The CS provides a reduction in the continuing education requirements for activating an inactive license. The reduction in requirements and potential for fee waivers would decrease costs to licensees.

C. Government Sector Impact:

The CS authorizes the department to waive fees due to financial hardship or fault of the department on a case-by-case basis. Because of this provision, there may be a reduction in department revenues, although the department anticipates that any reduction would be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries on March 29, 2011:**

The CS removes references to criminal investigations and instead provides that the Department of Highway Safety and Motor Vehicles may provide copies of drivers' licenses for the purpose of identifying subjects who are under investigation by the department for unlicensed activities. The CS adds that the board, or the department when there is no board, shall only require one cycle of continuing education courses, except for licensees under chs. 473 and 475, F.S. The CS amends the appraisal regulations and deletes the references to Uniform Standards of Professional Appraisal Practice. Instead, the CS provides that the professional standards will be adopted by board rule. The CS

provides that matters related to the nutritional content and marketing of foods offered in public food service establishments are preempted to the state. In addition, the CS provides that mandatory completion of a remedial educational program administered by a food safety training program provider may be imposed by the Division of Hotels and Restaurants on any public lodging establishment or public food service establishment that has operated in violation of ch. 509, F.S., or a rule of the division.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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